

STATE OF MICHIGAN
COURT OF APPEALS

DEBORAH LEE LARSON, a/k/a DEBORAH
LEE CONSTANTINEAU,

UNPUBLISHED
June 15, 2001

Plaintiff-Appellant,

v

No. 225458
Delta Circuit Court
LC No. 99-014882-DO

WARREN JAMES LARSON,

Defendant-Appellee.

Before: Sawyer, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

Plaintiff Deborah Constantineau¹ appeals as of right from a judgment of divorce. She challenges the trial court's decision to deny her request for spousal support or, in the alternative, to reserve the question so that it may be resolved at a future time. We reverse in part, affirm in part, and remand.

I. Basic Facts And Procedural History

Constantineau and defendant Warren Larson, who were teenagers at the time, married on August 10, 1968, in Iron Mountain, Michigan. The couple resided primarily in Escanaba, where they raised their three children, all of whom are now over the age of eighteen. During the marriage, Larson worked for the Mead Paper Corporation while Constantineau successfully sold insurance and at different times managed two separate enterprises, one of which was a screen-printing business she and Larson owned.

The couple evidently experienced problems from the start of their marriage. Constantineau alleged that after she and Larson married, he became verbally and physically abusive. She described Larson as having a hot temper, very jealous, and easily upset when "something wouldn't go his way," at which time he would shove her against a wall, raising his fist as if to strike her. Though Larson never physically assaulted her in front of their children, Constantineau said he pushed her down a flight of stairs in the early 1980s and he had abused

¹ To avoid confusion we refer to plaintiff as Constantineau, her surname before marriage, and to defendant as Larson.

their children at least once. Constantineau said that Larson falsely accused her of having affairs three different times. She recounted that Larson called her derogatory and profane names, sometimes in front of their children, though she conceded that she also engaged in name-calling during their arguments. According to Constantineau, in August 1998, Larson ordered her to leave the house because he wanted a divorce and, when she refused, he threatened to burn down the house down while she was inside it. Constantineau, understandably, considered this a serious threat.

While Larson admitted he made this threat to burn down their house, he said that it occurred twenty years earlier, not as recently as 1998 as Constantineau claimed. He also admitted to pushing Constantineau and yelling at her and his children. Yet, Larson said, both parties were at fault for the disintegration of the marriage because they had become unsuited to one another despite mutual attempts to solve their problems.

When Constantineau filed for divorce on April 13, 1999, both parties were suffering from varying degrees of ill health. Larson had experienced heart problems² and probably depression more recently. Constantineau, who had not been working pursuant to her psychiatrist's orders because of the multiple medications she took, was grappling with a bi-polar disorder. She claimed that Larson was sometimes supportive of her battle with her illness. At other times, Constantineau claimed, he was dismissive and controlling, once threatening to have her admitted to a mental health facility "because," as Constantineau stated, "I was crazy." She also noted that she had sought treatment three times on a voluntary basis and was seeing both a psychiatrist and psychologist.

Constantineau, who continued to be covered under her husband's health insurance before the divorce was finalized, received \$584 a month in Social Security disability compensation because of her illness. She estimated that she would need to pay \$279 a month for the three years she would be entitled to have COBRA coverage following the divorce. At the time of the divorce proceedings, Larson paid Constantineau temporary spousal support in the amount of \$162.79 per week, but, she said, she still could not meet her monthly expenses of \$3,300. That figure included a \$584.19 monthly payment on the marital home, which she requested in the property settlement, \$350 for food, \$302 for various utilities, \$125 for clothing, \$40 for cleaning, \$276.95 for COBRA insurance, \$77 for insurance premiums, \$200 for entertainment, \$100 for home maintenance, \$125 for gifts, \$400 for contributions, \$25 for subscriptions, \$50 for personal grooming, \$100 for taxes, and \$650 for a new car payment. This figure did not include \$250 a year to visit her son, approximately \$150 in out-of-pocket costs for her medications, or dental care and snowplowing expenses.

In light of these expenses and her inability to work, Constantineau asked the trial court to award her spousal support. When Larson's counsel argued that some expenses Constantineau had listed were excessive and unnecessary, her attorney countered that the expenses reflected the lifestyle to which Constantineau had become accustomed during the marriage. Further, her

² The trial court found that he suffered from "severe heart problems," but Larson testified that he was laid off for more than two years while recovering from a stroke.

counsel argued, this spousal support comported with the statutory guidelines on spousal support and Constantineau deserved support because of Larson's fault in the disintegration of their marriage.

The trial court issued written findings of fact and conclusions of law before entering the judgment of divorce. In a long list of valuable tangible and intangible personal property, the trial court awarded each party several pieces of separate property, including Constantineau's inheritance from her mother of approximately \$242,000, and denied Constantineau's request for half of Larson's retirement plan and pension. The trial court found that neither party was at fault for the disintegration of their marriage. The trial court agreed with Larson that Constantineau's monthly expenses were

\$2,500.00, not \$3,300.00 as she suggests. A review of her list of monthly expenses indicates that some expenses are matters of choice rather than need. For example, Plaintiff's contributions of \$400.00 per month is [sic] a matter of personal choice, and the allocation of \$350.00 per month for food is a matter of Plaintiff's choice in dining out rather than eating at home. In addition, Plaintiff allocates \$650.00 per month as a prospective car payment. This is not an appropriate *monthly* expense as she has equity in her existing vehicle and will have sufficient resources to later decide on the quality of any replacement vehicle. Therefore, her monthly needs are not approximately \$3,300.00 as she submitted, but \$2,500.00 which the Court finds.

The trial court awarded Constantineau the marital house appraised at \$130,000 and most of its furnishings, her automobile, and proceeds and security interests in the contract for the sale of the parties' business (the Weissert note), which was worth \$57,000, plus accounts and assets worth approximately \$90,000. In total, and aside from her separate property, Constantineau received assets worth approximately \$275,000. The various assets and accounts the trial court awarded to Larson, including his automobile, pension, and 401K, were worth approximately \$232,000. With respect to the question of spousal support, the trial court found:

Considering that the Plaintiff has sizeable [sic] assets in her own separate estate of approximately \$242,000.00 capable of earning income, and when combined with the income producing assets she has from the division of property herein, and further combined with her Social Security Disability income (\$585.00 per month), and the potential of the Weissart note payment of \$624.00 per month, it is obvious that she has sizeable [sic] monthly income which exceeds the needs found by the Court, income sufficient to support the lifestyle she maintains. She can do this without ever touching investment principal. Therefore, there is no need for spousal support, and neither party is entitled to nor shall receive same, and spousal support is forever barred. Interim support shall cease as of December 1, 1999.

Constantineau now contends that the trial court should have awarded her spousal support or reserved the issue for future consideration.

II. Standard Of Review

Whether to award spousal support is a matter entrusted to the trial court's discretion, meriting review on appeal for an abuse of that discretion.³ However, in making such a decision, the trial court must make factual findings, which we review for clear error.⁴

III. Spousal Support

The purpose behind spousal support "is to balance the incomes and needs of the parties in a way that [will] not impoverish either party."⁵ MCL 552.23 authorizes a trial court in a divorce action to order spousal support

if the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party . . . as the court considers just and reasonable, after considering the ability of either party to pay and the character and situation of the parties, and all the other circumstances of the case.

Consequently, when considering a request for spousal support a trial court should, when relevant, consider:

(1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, and (12) general principles of equity. In addition, the court may consider a party's fault in causing the divorce.^[6]

On appeal, Constantineau emphasizes several of these factors, arguing that they weighed in favor of awarding spousal support to her. She does not, however, note if the trial court made a finding on each factor and how that finding was clearly erroneous in any respect. For instance, Constantineau simply claims that Larson's abusive conduct was relevant to their past relations as well as the question of fault. She does not, however, argue that the trial court erred in determining that it could not

find that fault for the demise of this marriage should be assessed against either party. While the marriage had long been rocky, the mixture of mental and physical health concerns makes it difficult to assess fault to either party. Each accuses the other for the marriage's disintegration, but neither party has, through

³ See *Magee v Magee*, 218 Mich App 158, 161-162; 553 NW2d 363 (1996).

⁴ See *id.*; see also MCR 2.613(C).

⁵ *Ackerman v Ackerman*, 197 Mich App 300, 302; 495 NW2d 173 (1992).

⁶ *Thames v Thames*, 191 Mich App 299, 308; 477 NW2d 496 (1991) (citations omitted).

independent means, established why this marriage collapsed when it did. Dr. Holzgang's⁷ testimony suggests that the marital relationship was just one of numerous difficult stressors in the Plaintiff's life, and that only recently did it become difficult for her to deal with a marriage where her spouse was also experiencing emotional problems. Therefore, fault shall not be considered in the division of property nor in any award of spousal support.

This findings, as well as the other findings the trial court made, were well-grounded in the record and were certainly reasonable. They are not, therefore, clearly erroneous. Other courts might have found that any one or more of these factors supported a decision to award spousal support in a given case. However, Constantineau has failed to make that logical connection between her needs and abilities, Larson's conduct and ability to pay, and the decision not to award spousal support in the unique circumstances of this case. In simply reiterating the facts on the record without making specific arguments implicating the trial court's findings, Constantineau essentially asks us to engage in a de novo review of the record to decide the spousal support issue for ourselves. This is incompatible with our standard of review. Moreover, it is not our responsibility to search out the trial court's possible errors and make Constantineau's argument for her.⁸

Constantineau's argument regarding the trial court's findings on the basic support factors, including their relationship to the ultimate decision not to award spousal support, is lacking. However, there is substance to her argument that the trial court erroneously concluded that the assets it awarded her will produce sufficient income for her support without forcing her to invade the principal. Specifically, she points out that the Weissart note was in default, that she will likely have a difficult time obtaining health insurance in the future though she will almost certainly have health expenses, and that she will have to buy a new automobile. Her argument refers to the sort of financial need for daily maintenance that serves as a threshold requirement for spousal support pursuant to MCL 552.23.

The trial court's written factual findings indicate that it did consider these issues in denying Constantineau's request for spousal support. For instance, the trial court acknowledged that the Weissart note was on uncertain grounds and would not necessarily provide income to Constantineau immediately. However, the trial court recognized that if the purchaser defaulted on the contract, only Constantineau had a security interest in the property itself, and only she would be entitled to any payments including arrearages. The trial court then specifically noted, "The present value of this contract may not reflect its true value given the non-payment history, but it is backed by more than adequate security and provides a sizeable [sic] monthly payment at 7% interest," resulting in a monthly payment of \$624. The manner in which Constantineau will realize income from this asset is currently in question. Either she will receive the income to which she is entitled directly from the purchaser pursuant to the contract or she can sue for breach of the contract or reclaim the business and sell it to another individual. We cannot

⁷ Constantineau's psychiatrist.

⁸ See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

conclude that the trial court's decision to distribute this property to her and consider it to have financial value for her in the future was erroneous on the record before us.

Nor do we see any clear error in the trial court's decision to exclude a car payment, estimated at \$650, as part of Constantineau's necessary monthly expenses in considering her need for spousal support. Constantineau has not demonstrated that this single added expense would make the income from her assets as a whole inadequate for her maintenance, requiring spousal support. In fact, Constantineau has apparently not considered the investment income potential for any of her assets when asserting that the assets she was awarded are inadequate for her needs, even though the testimony at trial indicated that she, not Larson, was in charge of the family's finances including their investments and savings. Constantineau has not provided any evidence of what a reasonable or projected return on her assets might be, much less that they will leave a shortfall for her needs, even though many of these assets are liquid. With assets as significant as those awarded to her in the divorce and those she inherited from her mother, Constantineau should be able to derive at least some investment income from these assets, even when taking into consideration the vagaries of the market. On a related matter, we note that the trial court properly considered her ability to earn income from these assets, rather than solely considering the availability of the principal, in deciding that spousal support was unnecessary.⁹

As a whole, the trial court divided the marital estate fairly in an attempt to provide for the parties' needs. Though Larson was still working at the time of the divorce, his annual income of approximately \$66,000 before taxes did not leave him in a vastly better financial state than Constantineau, especially when considering his health and the work cutbacks that had been announced at the Mead plant shortly before the trial. Nor is there any evidence that, once Larson retires, his income will create an inequitable disparity between the parties' circumstances that could be cured by awarding spousal support.

The remaining issue is whether the trial court considered Constantineau's future health care costs, a factor appropriately considered in the context of awarding spousal support.¹⁰ The evidence on the record indicates that her health problems are debilitating. Her COBRA coverage will end eventually and she will be forced to pay for health care insurance – if she can find it – or she will have to pay for treatment and medication out of her own pocket. Though the evidence on the record does not suggest that there is any great inequality in the way the parties will live following this divorce, we acknowledge the likelihood that it would be inequitable to deny spousal support if Constantineau must dissipate her assets to obtain necessary medical treatment.

Because Constantineau's ability to find health insurance that will meet her needs in the future is very much up in the air at this point as she still has COBRA benefits, it is impossible to

⁹ See *Hanaway v Hanaway*, 208 Mich App 278, 196; 527 NW2d 792 (1995); *Zecchin v Zecchin*, 149 Mich App 723, 733-736; 386 NW2d 652 (1986).

¹⁰ See *McLain v McLain*, 108 Mich App 166, 173; 310 NW2d 316 (1981); *Cloyd v Cloyd*, 165 Mich App 755, 761; 419 NW2d 455 (1988).

conclude that the trial court erred in denying her spousal support that would start immediately. However, the uncertainty concerning health insurance in the future coupled with the compelling evidence of the disabling nature of Constantineau's illness leads us to conclude that the trial court erred when it did not reserve the issue to be determined at a later time. Thus, we reverse the trial court on this narrow point and direct that it reserve the issue of spousal support. In the future, should Constantineau be forced to dissipate her assets because she cannot find adequate or affordable health insurance, she can move the trial court to consider whether to award spousal support. At that time the trial court can consider the factors that support or contradict a spousal support award, including Larson's ability to pay and Constantineau's income.

Affirmed with respect to the trial court's decision to deny spousal support at this point, reversed concerning the trial court's decision not to reserve the spousal support decision, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Michael R. Smolenski

/s/ William C. Whitbeck